BRUNEI REPORT

Public Prosecutor v Henry Taye Johnson

COURT OF APPEAL (BRUNEI) — CRIMINAL APPEAL NO 4 OF 1994
KUTLU FUAD P, DEREK CONS AND MICHAEL KEMPSTER COMMISSIONERS
2 JUNE 1994

Criminal Procedure *— Jurisdiction of court — Offence committed on board a flight over international waters — Whether intermediate court had jurisdiction to try offence — Tokyo Convention Act 1967 (Overseas Territories) Order 1968 First Schedule paras 1, 2, 3 & 7 — Air Navigation Act (Cap 113) s 2*

Three charges were brought against the respondent, a national of Nigeria, for cheating by personation. The offences in question were alleged to have taken place in the air, over international waters, aboard an aircraft of Royal Brunei Airlines. The public prosecutor appealed against the ruling of the judge in the intermediate court that she lacked jurisdiction to entertain the three charges.

Held, allowing the appeal:

The First Schedule to the Tokyo Convention Act 1967 (Overseas Territories) Order 1968 ('the Order') provides that for the purpose of juridiction, any offence under the law in force in the 'territory' committed on board a British-controlled aircraft in flight is deemed to have been committed in the 'territory' and that the consent of a competent authority of the 'territory' is required before any proceedings may be instituted against an offender. By virtue of s 2 of the Air Navigation Act (Cap 113), Brunei is a 'territory' in the context and by para 7 of the Order, a British-controlled aircraft means an aircraft registered in the UK or in any 'territory'. Therefore, subject to proof that the aircraft was registered in Brunei and that the Attorney General, as the competent authority, had signified his consent to the prosecution, the intermediate court had jurisdiction to entertain the three charges in question.

Case referred to

Lockerbie Air Disaster, Re The: Pan American World Airways Inc & Ors v Cheryl Towanlock Andrius & Ors [1988] ILP 41 (refd)

Legislation referred to

Air Navigation Act (Cap 113) s 2(1)
Interpretation and General Clauses Act s 3
Criminal Procedure Code s 7
Penal Code s 2
Tokyo Convention Act 1967 (Overseas Territories) Order 1968 First Schedule paras 1, 2, 3

A *Dk Rostainah* (Deputy Public Prosecutor) for the public prosecutor. Respondent in person.

Cur Adv Vult

Derek Cons Commissioner (delivering the judgment of the court): This is the judgment of the court on an appeal by the public prosecutor from B the ruling of Hayati J in the intermediate court that she lacked jurisdiction to entertain three charges of cheating by personation brought before her against the respondent, Henry Taye Johnson, a national of Nigeria.

The offences in question were alleged to have taken place in the air, over international waters, aboard an aircraft of Royal Brunei Airlines, in C two instances inward bound from Kuala Lumpur and in the other instances, inward bound from Hong Kong. We assume for the moment that the aircraft were registered in Brunei, a fact which, if necessary, would have to be strictly proved.

The criminal jurisdiction of the courts of Brunei is founded upon s 7 D of the Criminal Procedure Code:

> Subject to the other provisions of this Code the jurisdiction of the said Courts in criminal matters shall extend to offences committed —
>
> (a) within Brunei; or
>
> (b) on the high seas on board ships registered in Brunei; or
>
> E (c) by subjects of His Majesty domiciled in Brunei whether the offence was committed within or without Brunei.

'Brunei' is defined in s 3 of the Interpretation and General Clauses Act, but there is no reference therein to registered aircraft.

F An echo of s 7 is to be found in s 2 of the Penal Code:

> Every person shall be liable to punishment under this Code, and not otherwise, for every act or omission contrary to the provisions thereof of which he shall be guilty within Brunei.

On a plain reading of the words, the sections we have just quoted are by G no means apt to include the present circumstances. But Dk Rostainah, who appears, as she did below, for the public prosecutor, has suggested that taken in the context of those present circumstances, the words 'within Brunei' admit of sufficient ambiguity to allow interpretation by way of what is sometimes called 'the mischief rule'. We are unable to accept that suggestion.

H Nor do we find assistance in *Re The Lockerbie Air Disaster: Pan American World Airways Inc & Ors v Cheryl Towanlock Andrius & Ors* [1988] ILP 41, a case before the Outer House of the Court of Sessions in Scotland. There, as the judge below observed, the court was concerned only with the most convenient forum in which to dispose of civil proceedings.

I There is more substance in the further argument, which we should mention here was not advanced in the court below, and which turns initially upon the Air Navigation Act (Cap 113). Section 2(1) thereof provides:

> The Orders in Council specified in the Schedule to this Act shall, to the extent specified in the Second Column of the said Schedule, be in force in

Brunei with such formal alterations and amendments as may be necessary to make the same applicable to the circumstances of Brunei, and in particular subject to the exceptions, adaptations, and modifications, if any, set forth in the third column of the said Schedule, as if Brunei were a Territory to which such Orders extend.

The Schedule contains reference, inter alia, to the Tokyo Convention Act 1967 (Overseas Territories) Order 1968, SI 1968 No 1864, and indicates that the whole of the Order shall be in force in Brunei.

Effect is given to the Order by way of its first Schedule. Paragraph 1 thereof provides:

Application of criminal law to aircraft

(1) Any act or omission taking place on board a British-controlled aircraft while in flight elsewhere than in or over the Territory which, if taking place in the Territory, would constitute an offence under the law in force in the Territory shall constitute that offence:

Provided that this subsection shall not apply to any act or omission which is expressly or impliedly authorised by or under that law when taking place outside the Territory.

(2) No proceedings for any offence under the law in force in the Territory committed on board an aircraft while in flight elsewhere than in or over the Territory (other than an offence under, or under any instrument made under, the Civil Aviation Act 1949) shall be instituted except by or with the consent of the competent authority of the Territory, but the foregoing provisions of this subsection shall not prevent the arrest, or the issue of a warrant for the arrest, of any person in respect of any offence, or the remanding in custody or on bail of any person charged with any offence.

(3) For the purpose of conferring jurisdiction, any offence under the law in force in the Territory committed on board an aircraft in flight shall be deemed to have been committed in any place in the Territory where the offender may for the time being be; and section 62(1) of the Civil Aviation Act 1949 as set out with modifications and adaptations in the First Schedule to the Colonial Civil Aviation (Application of Act) Order 1952 is hereby revoked in its application to the Territory.

A 'British-controlled aircraft' means, by virtue of para 7, inter alia, 'an aircraft which is for the time being registered in the United Kingdom or in any Territory'. Having regard to the final words of s 2 of the Air Navigation Act, Brunei is a territory in that context and, the offender being here, the offences, if proved, will be deemed to have been committed here, that is, within the normal jurisdiction of the courts.

We have to say, therefore, that subject to proof, as we have already mentioned, that the aircraft was registered in Brunei and that the Attorney General, as the competent authority under para 7 of the First Schedule to the Order, has signified his consent to the prosecution, the intermediate court does have jurisdiction to entertain the three charges in question. To that extent, the appeal is allowed.

Order accordingly.

Reported by Jeanne Tan